FILE COPY

NOV 28 19

CHARLES ELMORE CR

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 162.

UNITED STATES *ex rel.* ASPASIA POLYMERIS and ANTIGONE POLYMERIS,

Petitioner,

v.

JOSEPH W. TRUDELL, Immigration Inspector in Charge.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR PETITIONERS.

HAROLD VAN RIPER,
Attorney for Petitioners,
One Broadway,
Borough of Manhattan,
New York.

THE BALLOU PRESS NEW YORK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 162.

UNITED STATES *ex rel.* ASPASIA POLYMERIS and ANTIGONE POLYMERIS,
Petitioners,

v.

JOSEPH W. TRUDELL, Immigration Inspector in Charge.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR PETITIONERS.

Petitioners desire to rely upon the brief submitted with their petition for writ of certiorari and to submit this as a supplement thereto.

Section 4 of the Immigration Act of 1924 (8 U. S. C. 4) provides:

> "When used in this Act the term 'non-quota immigrant' means—
>
> (a) an immigrant previously lawfully admitted to the United States who is returning from a temporary visit abroad;"

This can refer only to an alien who was lawfully admitted for permanent residence, who thereafter established and maintained a domicile in the United States, and who at no time has by intent or otherwise relinquished that domicile.

The decision of the Secretary of Labor is printed in full as an appendix to the petition and brief at page 28 thereof. After reciting and not questioning the facts of the case, it goes on to say at page 31:

> (a) "It is also found that the aliens are not non-quota immigrants as defined by the Act of 1924. *Retention of domicile with its intention to return is insufficient to establish such status.*" (Italics ours.)

This obviously is a mistaken conception of the law of domicile (*Mitchell* vs. *U. S.*, 21 How. 350, 22 L. Ed. 584), and both of the courts below so held herein.

Also on page 31 it says:

> (b) "The condition now imposed by the regulations for dispensing with an immigration visa in such case as this is the possession of an unexpired permit to return. * * * The aliens have no immigration visas nor permits and are therefore prohibited from entry."

This conclusion is not legally sound if the First Circuit's decision in *Johnson* vs. *Keating ex rel. Tarantino*, 17 F. (2d) 50, is good law.

The two questions above mentioned are the only ones arising in the case at bar, they both raise propositions of law and, therefore, are properly subject to review by the courts (*Gegiow* vs. *Uhl*, 239 U. S. 3-9).

In our main brief we failed to lay sufficient emphasis upon one phase of the question involved, *i. e.*, the manner in which the statute directs the Secretary of Labor to make regulations for the enforcement of the Immigration Act of 1924.

First and foremost we must remember that petitioners left the United States on the journey in question in August, 1923, at which time the Immigration Act of 1921 as amended by the Act of 1922 was in force, which Act carried no provision either for applying for or issuing re-entry permits. At that time it was impossible for petitioners to secure any document in the nature of a re-entry permit, and they did the only thing within their power, namely, to execute before

a Notary a declaration of their intention to return within six months and to have affixed thereon a County Clerk's certificate (R. 71), so that when afterwards they should apply to a Consul for a visa, they could exhibit it to him as evidence of their status as residents of the United States. The present Act was not passed until May 26, 1924 and did not become effective until July 1, 1924.

An examination of Section 10 of the Immigration Act of 1924 (8 U. S. C. 210) will show that said section is a complete entity and contains within itself a provision for the making of regulations for *its* enforcement.

An examination of Section 13 (a) of the Act of 1924 (8 U. S. C. 213-a) will show that it provides that no immigrant shall be admitted to the United States unless he has an unexpired immigration visa. However, an examination of Sub-Section (b) of said Section 13 will show that it provides

> (b) "In such classes of cases and under such conditions as may be by regulations prescribed immigrants who have been legally admitted to the United States and who depart therefrom temporarily may be admitted to the United States without being required to obtain an immigration visa."

It particularly is to be noted that this section also is a separate and distinct entity and contains a provision for the making of regulations for *its* enforcement. Certainly it does not relate to the same regulations as those contemplated for the enforcement of Section 10. Therefore, Section 13 (b) can only be construed as providing a means whereby a returning resident can re-enter without a visa even though not possessed of a re-entry permit.

At page 7 of respondent's memorandum he prints in full what he contends to be the Secretary of Labor's regulations applicable to the case at bar, namely, Rule 3, Sub-Divisions F and I, Par. 1 (Immigration Laws and Rules, January 1, 1930, p. 122). Both of these subdivisions call for either a visa or a re-entry permit except and only in the cases of alien residents returning from temporary visits to foreign

contiguous territory. Section 13 (b) provides for the re-entry without visas, or, by inference, re-entry permits, of returning alien residents no matter from whence they are returning.

From all of the foregoing it clearly is apparent that the Secretary of Labor has made no regulations for the proper enforcement of the provisions of Section 13(b), and that petitioners lawfully cannot be excluded from re-entry into the United States merely because the Secretary of Labor has made no regulations which conform with the provisions of law applicable to their cases.

For all of the foregoing reasons petitioners respectfully pray that the decision of the Court below be reversed, that the writ of habeas corpus be sustained, and that the relators be discharged.

HAROLD VAN RIPER,
Attorney for Petitioners,
One Broadway,
Borough of Manhattan,
New York.